

CLAUSE NOTES

Sentencing Amendment (Breaches of Home Detention Orders) Bill 2023

- Clause 1** **Short title**
- Clause 2** **Commencement**
- Provides that the Act commences on Proclamation. This will allow if necessary or appropriate, for the courts, Police and Community Corrections to make any system and training changes required to implement the reform.
- Clause 3** **Principal Act**
- Provides that the Principal Act that is being amended is the *Sentencing Act 1997*.
- Clause 4** **Section 42AD(1)(h) amended**
- This amends section 42AD(1)(h) of the Principal Act, which currently provides for the core condition that an offender must not tamper with, damage or disable any device used for the purpose of electronic monitoring. It adds to section 42AD(1)(h)(i) the words “without reasonable excuse” to make clear that in some circumstances, such action will not be a breach of the core condition (for instance, a medical emergency could require removal of a device).
- Clause 4 also inserts a new subparagraph (ia), being a core condition extending subparagraph (i) to an offender knowingly permitting another person to perform those actions in relation to a device, without a reasonable excuse.
- Both activities are also made the subject of new offences, in new section 42AKA (Clause 7).
- Clause 5** **Section 42AH amended**
- This amends section 42AH, which otherwise deals with applications to vary or cancel home detention orders, brought by an offender subject to such an order or an authorised person, to the court that made the order. ‘Authorised person’ is defined in section 4 of the Principal Act.
- Clause 5 inserts four new subsections ((2B)-2(E)) following existing subsection (2A). These allow an offender or appropriate person to make an oral application under the section, in contrast to the requirement in subsections (1) and (2) for the creation and service of a copy of an application.
- This reflects an existing oral application procedure in Part 5A, in section 42AJ(3): Breach of condition of home detention order where offender found guilty of offence.
- New subsection (2B) allows an oral section 42AH application to any court, not only that which made the home detention order, if the offender is appearing before the court in relation to an offence and the court considers the oral application appropriate in the circumstances.

The other three new subsections deal with procedural matters following a subsection (2B) application.

New subsection (2C) gives the court discretion to direct the applicant to provide the other parties to the application with written grounds for it.

New subparagraph (2D)(a) states that a court to which the oral application is made, being a court that is not the court that imposed the home detention order, may deal with the section 42AH application.

Under new subparagraph (2D)(b), the court may instead decide to adjourn the proceedings to the court that made the order and either grant the offender bail or remand the offender in custody.

New subsection (2E) flows on from (2D)(b) – the court to which the application is adjourned, being that which originally made the home detention order, is taken to be the court to which the section 42AH oral application was made.

Clause 6

Section 42AI amended

This amends section 42AI, which otherwise deals with applications regarding an alleged breach of condition, brought by an authorised person, to the court that made the order. 'Authorised person' is defined in section 4 of the Principal Act.

Clause 6 amends section 42AI by adding four new subsections in a similar manner to clause 5 and its amendments to section 42AH.

This clause also reflects an existing oral application procedure in Part 5A, in section 42AJ(3): Breach of condition of home detention order where offender found guilty of offence.

New subsection (2B) allows an oral application if the offender is appearing before the court in respect of a matter and the court considers the oral application appropriate in the circumstances.

New subsections (2C), (2D) and (2E) are identical to those in Clause 5 regarding section 42AH.

New subsection (2C) gives the court discretion to direct the applicant to provide the other parties to the application with written grounds for it.

New subparagraph (2D)(a) states that a court to which the oral application is made, being a court that is not the court that imposed the home detention order, may deal with the section 42AH application.

Under new subparagraph (2D)(b), the court may instead decide to adjourn the proceedings to the court that made the order and either grant the offender bail or remand the offender in custody.

New subsection (2E) flows on from (2D)(b) – the court to which the application is adjourned, being that which originally made the home detention order, is taken to be the court to which the section 42AH oral application was made.

Clause 7

New section 42AKA inserted

Clause 7 inserts a new section 42AKA, Offence relating to electronic monitoring devices, into the Principal Act after current section 42AK, Offence relating to home detention order.

New section 42AKA(1) provides a person who is required to submit to electronic monitoring as part of a home detention order must not, without reasonable excuse:

- tamper with, damage or disable any device used for the purpose of the electronic monitoring; or
- knowingly permit another person to tamper with, damage or disable any device used for the same purpose.

This means a breach of a core condition of a home detention orders in section 42AD(1)(h), as amended by Clause 4, can also be charged as an offence.

New section 42AKA(2) provides a person must not, without reasonable excuse, tamper with, damage or disable any device used for the purpose of the electronic monitoring of another person in accordance with a home detention order. This means another person may be charged if they tamper with the electronic device of another person.

These offences are subject to the exception of 'reasonable excuse' and carry a maximum penalty of fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both. This reflects the maximum penalties for the other offences regarding sentencing orders in the Act.

Clause 8

Section 42AL amended

This amends section 42AL. Section 42AL currently provides a court may issue a warrant in certain circumstances.

Clause 8(a) deletes current subsection (3) (which is limited to where an offender hasn't appeared before court as required) and replaces it with a new subsection (3). This extends the power to issue a warrant to where the court, magistrate or justice believes on reasonable grounds that the offender has breached, is breaching, or is about to breach, a condition of the order. This is similar to the existing power of police to arrest an offender without warrant in subsection (4).

Clause 8(b) and (c) delete a reference to an order "made by a court of petty sessions" in subsection (3A), and add "a court" to subparagraph (3A)(a). This means that subsection 42AL(3A) is amended to require a police officer who has arrested a person under either of the two court warrant powers in section 42AL(1) or (3) as amended to bring the offender before a court, justice or a magistrate as soon as practicable. Section 4 of the Act defines 'court' to mean the Supreme Court, the Court of Criminal Appeal or a court of petty sessions.

Clause 8(d) amends replaces subsection (3A)(b) to reflect the broader provisions for a court, magistrate or justice to remand the offender in custody, admit the offender to bail, or adjourn the proceedings to the court that made the order.

This means that under the amended section 42AL:

- a person may seek an arrest warrant from a court, magistrate or justice regarding breaches of home detention orders, without being limited to the court which made the original order; and

- an offender so arrested on a warrant is brought before that court, which can deal with the initial appearance and determine the question of remanding or bailing the offender, without being limited to the court which made the original order.

A person arrested by police without warrant under the current provisions in section 42AL(4) will continue to be dealt with under subsection (5).

Clause 9

Repeal of the Act

This automatically repeals the amending legislation 12 months after the Act is fully commenced. This is because the amendments are incorporated into the Principal Act, and will remain in force after the repeal of the Amending Act.